

**IN THE MATTER OF:**

**Commission of Inquiry into the Circumstances  
Surrounding the Death of Phoenix Sinclair**

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**SUPPLEMENTARY AFFIDAVIT OF JANET KEHLER  
AFFIRMED APRIL 4, 2012**

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IN THE MATTER OF:

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the Death of Phoenix Sinclair**

**SUPPLEMENTARY AFFIDAVIT OF JANET KEHLER**

I, JANET KEHLER, of the City of Winnipeg, in the Province of Manitoba,

AFFIRM AS FOLLOWS:

1. This affidavit is supplementary to the Affidavit I affirmed on June 27, 2011.
2. At this time, I understand that Commission Counsel intends to interview 38 social workers or former social workers and who had involvement in the Phoenix Sinclair file as that involvement relates to Phase I of the Inquiry. Of the 38 social workers, 28 have elected to be represented by Myers Weinberg, 6 are represented by D'Arcy & Deacon and 3 are represented by Thompson Dorfman Sweatman. There is 1 additional social worker who is an MGEU member and I understand has declined to be represented by any legal counsel at the Inquiry.
3. Each of the 28 social workers represented by Myers Weinberg is identified as a witness on a public hearing witness schedule recently released by commission counsel (for Phase I - July to October 2012), and each of the 28 are seeking the relief sought by the MGEU's motion.
4. I am also advised that each of the 9 social workers represented by D'Arcy & Deacon and Thompson Dorfman Sweatman is also seeking the relief sought by the MGEU's motion. At this point, all 3 of the social workers represented by Thompson Dorfman Sweatman appear on the witness schedule, as are 3 of the 6 represented by D'Arcy & Deacon.

5. All of the social workers referred to above were employed with either Winnipeg Child and Family Services or a First Nation Child and Family Services Agency at the time of his or her involvement in the Phoenix Sinclair file. Of those people employed at the time by Winnipeg Child and Family Services, each person worked as either a front line social worker (or supervisor) and was involved in providing child welfare services to Phoenix Sinclair or in supervising those services. Of those people employed at the time by a First Nation Agency, I understand witnesses will be interviewed in relation to the person's or Agency's involvement or contact with Phoenix Sinclair's family prior to and subsequent to her death.
  
6. To the best of my knowledge, of the 28 social workers described above and represented by Myers Weinberg, 21 remain employed as front line social workers whose jobs are to provide front line services as a social worker (or supervisor) just as they did at the time of their involvement with the Phoenix Sinclair file. Only 2 are no longer employed in the child welfare or social work professions. One person is retired and the other is employed privately with a First Nation. While the remaining 5 people have changed positions, they remain employed by a Child Welfare Agency or Authority, Winnipeg Child and Family Services, or by an office or government department that provides services to children and families within the context of child welfare and child protection. In that respect, they, like front line social workers, work directly with families and children and review child protection files. They speak directly to children and families and other witnesses and sources of referral within the child protection system.
  
7. MGEU also represents one person who is scheduled to be interviewed by commission counsel, and is on the public hearing witness schedule, who is not a social worker. This person was employed at the time as a counsellor / therapist and provided therapeutic services to individuals including children who are expected to be interviewed by Commission Counsel or to testify during Phase I of the Inquiry. Those services were provided in the context of counsellor-patient relationship and are presumed to be highly confidential in nature. Although this person is not a social worker, any documents created by this person for child welfare agencies are presumptively protected by section 76 of the Child and Family Services Act ( the "Act"). Further, in the context of child welfare proceedings and testimony related to such proceedings, this person's identity

would be protected pursuant to section 75 of the Act. This person also seeks the relief sought in MGEU's Motion.

8. In paragraph 16 of my previous Affidavit, I advised that I had met with or spoken to nearly all of the MGEU members who may potentially be involved in the Inquiry. I have continued to meet and speak with all 29 of the members MGEU represents, both individually and in group meetings since then. I have met with our members as a group on the following dates:

2011: September 20

2012: January 31, February 1, March 13

9. The concerns I included at paragraphs 16, 17 and 18 of my previous affidavit continue to be expressed by these MGEU social workers both individually and in the group meetings.
10. Since my last Affidavit, there continues to be significant media coverage of all aspects of the Phoenix Sinclair Inquiry to date
11. Two of the media organizations that oppose the MGEU Motion prohibiting the public identification of social worker witnesses are the Winnipeg Free Press and the Winnipeg Sun. Both are newspapers published in Winnipeg but generally available in print form across the Province of Manitoba.
12. As is common in newspapers, both the Winnipeg Free Press and the Winnipeg Sun regularly publish letters to the editor in their print editions. In addition, they both have complete copies of each day's newspaper posted on their internet website and both papers allow for reader comments to be posted on the website below each article. Contributors can send in multiple comments on any particular story and comments are posted and appear on the website.
13. In the case of the Winnipeg Sun, its website contains a link to Terms and Conditions as they pertain the public's posting of comments on the website. A copy of the Winnipeg

Sun *Terms & Conditions* is attached hereto and marked as Exhibit "A" to this my Affidavit.

14. The Winnipeg Sun also has a link to a document entitled "*Netiquette*" which purports to govern the content of readers' comments posted on the Winnipeg Sun website. Attached hereto and marked as Exhibit "B" to this my Affidavit is a copy of the *Netiquette* rules as they appear on the Winnipeg Sun website.
15. Subsequent to MGEU's motion brought before the Manitoba Court of Appeal in February 2012, the Winnipeg Sun reported on Friday, March 2<sup>nd</sup> of the MGEU's decision not to appeal the decision of the Court of Appeal Judge in Chambers. Attached hereto and marked as Exhibit "C" to this Affidavit is a copy of the Winnipeg Sun article as well as reader comments that appear on the Winnipeg Sun website below it.
16. Reader comments that were submitted and allowed to remain on the Winnipeg Sun website and are contained in the above-noted Exhibit, include the following comments:
  - *...they want to hide and be saved, they should be named and have to stand in front of all and admit they were not doing there (sic) jobs*
  - *Useless A\$\$ HOLES. They don't give a \$hit about a little chill's life*
  - *CFS = home and family wreckers!!!*
  - *(in reference to the MGEU letter reproduced in the article) I am going to paraphrase this letter. Title: here are the top 10 reasons we should not be blamed for the shit the government is about to find out.*
  - *These people need to be held accountable for their actions (or lack of)*
  - *Janet, Jan, Lois...you three are nothing but scummy bitches (referencing Janet Kehler, MGEU Staff Representative, Jan Henley, 4<sup>th</sup> Vice President, and Lois Wales, MGEU President)*
  - *Whoever was the caseworker that took that poor kid back should be shot.*

17. On March 8<sup>th</sup> MGEU Communications Officer Jeremy Peterson wrote to the Winnipeg Sun's general email on the "Contact Us" page as follows:

*"Hello:*

*I am writing in response to some of the comments posted on a story on your website. After the following story, "MGEU won't appeal Sinclair Inquiry decision" there is a comment that refers to MGEU members as "scummy bitches" and another that says "whoever was the caseworker that took that poor kid back should be shot". Given that both of these comments violate the terms of use of your site, I flagged both for your moderator earlier this week, but when I bring up the story both comments are still there. Can someone please look into this?"*

18. Notwithstanding Mr. Peterson's request, as of the date of this Affidavit, all of the above-noted comments continue to be available for all to see on the Winnipeg Sun website.
19. On February 4, 2012 the Winnipeg Free Press published an article entitled "*Phoenix Inquiry could be delayed*". This article also appeared on the Winnipeg Free Press website which, similar to the Winnipeg Sun, allows for individuals to post comments. Attached hereto and marked as Exhibit "D" to this my Affidavit is a copy of the Winnipeg Free Press article as well as a page containing a comment which reads:

*"MGEU....its only dead and abused kids right. Not a fat overpaid cfs worker we worry about getting made responsible for their action (i.e. JOB)."*

20. On February 5, 2012 Tom Brodbeck, a columnist with the Winnipeg Sun, wrote an article in the Winnipeg Sun entitled *UNION SCHEMING SHAMEFUL* which is attached hereto and marked as Exhibit "E" to this my Affidavit. In the article Mr. Brodbeck references the MGEU in the following manner:

- *Especially when their efforts are designed to protect the careers of their union members at the expense of uncovering the truth about what happened to Sinclair.*
- *What's even more egregious about all this is the MGEU's desire to try to whitewash an inquiry that might uncover weaknesses and gaps in the Child and Family Services system and perhaps prevent a future, similar death.*

- Which is exactly why the MGEU doesn't want an inquiry. They don't want their members to be held accountable for their actions.

21. On February 24, 2012 the Winnipeg Free Press published an article entitled "Sinclair Inquiry delayed until July 4". Comments were allowed and a copy of the article as well as a page from the Winnipeg Free Press website is attached and marked as Exhibit "F" to this my Affidavit. The comment posted on the Winnipeg Free Press website states as follows:

*"if the social workers responsible for this child would have made home visits and checked on her wellbeing they wouldn't be in this position...what position is that...being held accountable for their actions. Now lets get on with it, and let heads roll...and firing begin."*

22. On Wednesday, August 24, 2011 the Winnipeg Sun front page contained the following headline:

## COWARDS

Union's attempt to hide identities of social workers

at Inquiry into tot's death shameful: Brodbeck >> PAGE 5

23. In the page 5 article Brodbeck accused MGEU of not wanting the public to get the whole truth and nothing but the truth from the upcoming Commission of Inquiry. In this article:

- (a) He wrote that the union wants the Inquiry to be a "whitewash".
- (b) He advises that the MGEU does not believe its members should be held accountable in any way, shape or form for this avoidable death.
- (c) He references the motion for publication ban as an attempt to give MGEU members "some type of special treatment" and concludes "that's a laugh".
- (d) He references the Tory vote rigging scandal of 1998 and that all involved in that had their names in the paper and on TV. He says, "Why should this be any different?"

- (e) He says that the Inquiry *"will likely cause harm and embarrassment to those who worked in the system..."*
- (f) He references the Inquiry as *"judgment day"*.
- (g) In Mr. Brodbeck's view, *"If you screwed up, you should have to face the music, just like everybody else."*
- (h) He questions, *"Why would you want your name protected if you didn't do anything wrong?"*
- (i) He concludes, *"Shame on you, MGEU, for even asking."*

Attached hereto and marked as Exhibit "G" to this my Affidavit is a copy of the front page and the article referenced above.

- 24. The question of cameras in our courts recently was considered in the Provincial Court of Manitoba regarding the sentencing of Graham James on charges of sexual assault.
- 25. There have been recent media articles concerning cameras in courtrooms posing safety risks, including an article in the Winnipeg Sun on October 24, 2011 entitled *"Cams pose safety risk: prosecutors"*. Attached hereto and marked as Exhibit "H" to this my Affidavit is a copy of that article.
- 26. In the article, a Winnipeg crown attorney is quoted as saying:  
  
*"I honestly wouldn't do this job if there were cameras in the courtroom. I don't even want my picture in the paper, never mind having it on camera."*
- 27. The president of the Manitoba Association of Crown Attorneys, Lisa Carson is quoted as saying:  
  
*"It's one thing to have members of the public come in and watch, it's another thing to broadcast the faces of everybody involved on the local news. That definitely creates a concern."*
- 28. A defence lawyer, Josh Weinstein, is also quoted in the article as saying:



*"It's one thing for a family of a victim to see me in court and make disparaging remarks to me, it's another where my mug shot is broadcast everywhere and somebody who has a beef with what I do, sees me in Safeway and approaches me."*

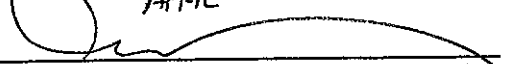
29. Regarding the sentencing of Graham James for a series of sexual assaults he committed while coaching hockey, held in Winnipeg on Tuesday, March 20<sup>th</sup>, an application was brought by CTV, CBC, Global and the Winnipeg Free Press to have two stationary cameras installed in the courtroom to record and broadcast the proceedings.
30. In her decision on March 19, 2012 denying the application, attached hereto and marked as Exhibit "I" to this my Affidavit, Provincial Judge Carlson made a number of statements regarding the effect of cameras in the courtroom, including:
  - *This case is highly charged enough; it is not going to become a spectacle. (p.12)*
  - *...once a broadcast of these reasons for decision being read by the Court is obtained, there is the potential for rebroadcasting, including on the internet, over and over again, in perpetuity. We all know that internet postings may not be effectively erased. (p. 13)*
  - *This could be extremely embarrassing for the victims since portions of the reasons being read -- perhaps the sexually explicit portions -- could show up on the internet anytime linked with other material that is out of control of the applicants, out of control of the victims, and out of control of the court. (pp. 13-14).*
  - *If victims have to worry that there may be a camera anywhere near the Court proceedings, it is reasonable to expect that they may not come forward. (p. 15)*
31. As illustrated above, the media and in particular the Winnipeg Free Press and Winnipeg Sun have published articles and allowed comments in their newspapers and websites that are sensational in nature. The statements in the articles and comments sections are directly aimed at the work performed by social workers.
32. Some articles and comments have referenced, suggested or stated facts which simply are not true. On that basis, criticism has been directed at social workers as a whole,

notwithstanding that many social workers involved with Phoenix Sinclair's file did very good work and acted appropriately. Social workers who testify, and whose names and faces are widely broadcast in the media, may be unfairly all "painted with the same brush" by both the media and the public. By just having one's name and face included in a story or article about the testimony at the Inquiry, a social worker will be seen as having been involved or responsible for acts or omissions disclosed in the evidence.

33. That said, there are certain workers who, given their involvement and the timing of their involvement in the Phoenix Sinclair file, are likely to have their evidence highly sensationalized by the media.
34. Having knowledge about the facts of this case and having reviewed the media reports to date and public comments, I am extremely concerned for the safety and well being of those social workers who are involved in some of the more contentious and sensitive aspects of the Phoenix Sinclair file should their identities be disclosed through the media.
35. Many witnesses who will be required to testify will be asked questions about actions that occurred between 6 to 12 years ago. When witnesses were first advised that they had involvement with the matters before the Inquiry, many of them were unable to recall having provided services or even having been involved in Phoenix Sinclair's case. This is not surprising due both to the passage of time, and the relatively limited involvement of many witnesses. In addition, many of the social workers who had involvement in the file did not become aware until months or even years later that they would ever be expected to recall or be asked about actions that occurred as a routine part of their day to day workload years earlier.
36. Consequently, many people are unable to specifically recall their involvement. This renders witnesses unable to offer explanations for many of the actions taken in relation to the services they provided to Phoenix Sinclair. It would be highly unfair to the witnesses, particularly when they may be unable, due to the passage of time, to explain why they did or did not take certain action to have them personally identified by the media and heavily criticized, without having the benefit of specific recall to explain their actions.

37. I make this Affidavit in good faith.

AFFIRMED BEFORE me at the City of )  
Winnipeg, in the Province of Manitoba, )  
this 4<sup>th</sup> day of ~~March~~ <sup>APRIL</sup>, 2012. )  
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A Notary Public in and for the Province of )  
Manitoba. )

  
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JANET KEHLER